

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
Lawrence J. Merboth et al.	§	Confirmation No.: 8379
	§	
Serial No.: 10/799,815	§	Group Art Unit: 2618
	§	
Filed: March 12, 2004	§	Examiner: Wendell, Andrew
	§	
For: POWER SHARING PROCESS IN	§	Atty Docket: LUCW:0009/FLE/DOO
CELLULAR NETWORK	§	Merboth 1-9
ARCHITECTURE		

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**REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41**

Appellants submit this Reply Brief pursuant to 37 C.F.R. § 41.41 and in response to the Examiner's Answer mailed on April 1, 2009. Specifically, this Reply Brief highlights the underlying deficiencies of the contentions made by the Examiner in the Examiner's Answer with respect to Mantha et al. U.S. Publication No 2004/0023622, (hereinafter "Mantha"), Lachtar et al., Publication No. 2003/0125039 (hereinafter "Lachtar"), Jeon et al., U.S. Publication No. 2004/0253928 (hereinafter "Jeon"), Kang U.S. Publication No. 2001/0016503, (hereinafter "Kang") and Hongo et al. U.S. Publication No. 2003/0022639 (hereinafter "Hongo"). In the interest of brevity, Appellants have addressed below only those issues or arguments raised in the Answer that are particularly noteworthy. Accordingly, in view of Appellants' attempt to avoid repetition in this Reply, Appellants respectfully request that the Board consider the following remarks in addition to the complete arguments set forth in the Appeal Brief filed on December 9, 2008.

**First Ground of Rejection**

In the Examiner's Answer, the Examiner maintained that claims 1, 6, 13, and 17-20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Mantha in view of Lachtar. Appellants respectfully urge the Board to reverse these rejections in view of the reasons set forth in the Appellants' Brief, and reiterated below.

***Independent Claims 1, 13, and 19***

Independent claim 1 recites, *inter alia*, "a scheduler configured to receive an indication to *allocate the un-utilized transmission power from the first wireless service of the first industry standard wireless system* to a second wireless service of a second industry standard wireless system and utilize the indication to *allocate the un-utilized transmission power for the second wireless service.*" (Emphasis added.)

Similarly, independent claim 13 recites, *inter alia*, "*allocating transmission power to the second industry standard wireless system from the first industry standard wireless system* for at least one communication channel based on an indication of transmission power that is *un-utilized by the first industry standard wireless system.*" (Emphasis added.)

Finally, independent claim 19 recites, *inter alia*, "*determining...whether non-utilized transmission power from the first industry standard wireless system may be allocated to the second industry standard wireless system, providing an indication to allocate non-utilized transmission power from the first industry standard wireless system to the second industry standard wireless system to a scheduler.*" (Emphasis added.)

In the Appeal Brief, Appellants specifically set forth arguments that Lachtar failed to teach *allocating transmission power* or providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system, as recited in independent claims 1, 13, and 19. *See* Appeal Brief, page 15. In response, the Examiner argued, in the Response to Arguments section of the Examiner's

Answer, that “Lachtar...teaches allocating power between units in a communication system.”

See Examiner’s Answer, page 13. The Examiner continued to argue this position in the response to the argument (C) section of the Examiner’s Answer, stating:

In figure 2 of Lachtar it teaches power allocation between two distinct base stations (BTS) (i.e. 108A/B in figure 1) based on capacity information 208 (FIG. 2) in determining for which base station for the mobile unit to communicate with 210-212 (Fig. 2). Lachtar clearly teaches power allocation between distinct base stations.

Examiner’s Answer, page 15. (Emphasis added.)

Appellants respectfully submit that the assertion that Lachtar teaches allocation of power between distinct base stations (i.e., units) in a communication system is erroneous. The portion of Lachtar cited by the Examiner as teaching power allocation between distinct base stations is FIG. 2, reference 208-212 of Lachtar. See Examiner’s Answer, page 15. However, the portions of the Lachtar disclosure describing FIG. 2 do not appear to validate the conclusion made by the Examiner.

Instead, FIG. 2 of Lachtar appears to be a flow chart describing a mobile unit attempting to contact a base station transceiver subsystem (BTS) (e.g., 108A or 108B) of a base station. See Lachtar, paragraph 28, lines 4-5 and 19-21. The BTS communicating with the mobile unit then contacts its serving base station controller (BSC) (e.g., 104) which contacts the respective mobile switching center (MSC) (e.g., 102). See *id.* at lines 11-14. In step 206, the MSC (e.g., 102) directs the BSC (e.g., 104) to allocate resources to service the call whereby the BSC (e.g., 104) determines candidate BTS’s (e.g., 108A and 108B) to service the call and seeks capacity information from each candidate BTS (108A and 108B). See *id.* at lines 22-25. At step 208, the BSC (e.g., 104) receives the excess capacity reports from the candidate BTS’s (e.g., 108A and 108B) that respond and based on the reported excess capacity information received, at step 210, the BSC (e.g., 104) selects at least one BTS (e.g., 108A) from those reporting based upon the reported excess capacities and frequency preferences for the particular operation. See *id.* at lines 25-36. After the selection is made in step 210, a traffic channel serviced by the selected BTS

(e.g., 108A) on the selected carrier frequency is assigned and the call is serviced until it is complete in step 212. *See id.* at lines 36-39.

Thus, it appears that FIG. 2 of Lachtar merely describes steps for determining which of a plurality of base stations has excess capacity to handle a call made from a mobile unit. *See* Lachtar, FIG. 2, reference 210. Once the determination is made that a given base station has excess capacity and the capability to handle a given call request, that base station is assigned to the call until the call is complete. *See* Lachtar, FIG. 2, reference 212. However, even if, *arguendo*, the base stations described above are read to be a first industry standard wireless system and a second industry standard wireless system, there is no suggestion or teaching of *allocating transmission power* or providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system, as recited in independent claims 1, 13, and 19. There is simply allocation (or indication thereof) of transmission power from one base station to another as recited in independent claims 1, 13, and 19. Instead, FIG. 2 of Lachtar merely describes a selection process between two base stations; not a power allocation process between those same base stations.

Furthermore, as previously set forth on page 12 of the Appeal Brief, the Examiner admitted that the Mantha reference fails to teach power sharing between *a first and a second industry standard wireless system*. *See* Final Office Action, page 3. Therefore, Mantha cannot be read as teaching *allocating transmission power* or providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system. Accordingly, Appellants respectfully submit that independent claims 1, 13, and 19 are allowable and respectfully request reversal of their rejection. For at least these reasons, among others, Appellants respectfully request that the Board overturn the rejections under 35 U.S.C. § 103(a) of independent claims 1, 13, and 19, as well as all claims depending therefrom.

**Second Ground of Rejection**

In the Final Office Action, the Examiner maintained that claims 8 and 10 were rejected under 35 U.S.C. § 103(a) as unpatentable over Mantha et al. in view of Lachtar et al. and further in view of Kang. Appellants respectfully urge the Board to reverse this rejection in view of the reasons set forth in the Appellants' Brief, and reiterated below.

**Independent Claim 8**

Independent claim 8 recites, *inter alia*, “ a power sharing module configured to...determine from the plurality of signals whether the *second baseband system may allocate power from the first baseband system*, a scheduler configured to receive *an indication to allocate un-utilized transmission power to the second baseband system from the first baseband system and to utilize the indication to allocate un-utilized transmission power* for the second plurality of communication channels.” (Emphasis added.)

The Examiner has rejected independent claim 8 under similar reasoning to that applied to independent claims 1, 13, and 19. *See* Examiner's Answer, pages 9-10. Accordingly, arguments analogous to those presented above with respect to the Mantha and Lachtar references can be applied to the prior art failing to teach allocating *un-utilized transmission power* between a first and a second baseband system. Furthermore, the Kang reference fails to cure the deficiencies of the Mantha reference and the Lachtar reference noted above.

As such, the cited references, taken alone or in hypothetical combination, fail to disclose all the features of independent claim 8. Appellants, therefore, asserts that independent claim 8, as well as all claims depending therefrom, are allowable. For at least these reasons, among others, Appellants respectfully request that the Board overturn the rejections under 35 U.S.C. § 103(a) of independent claim 8, as well as all claims depending therefrom.

**Conclusion**

Appellants respectfully submit that all pending claims are in condition for allowance and urge the Board to reverse the outstanding rejections.

Respectfully submitted,

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/Matthew C. Dooley/  
Matthew C. Dooley  
Reg. No. 61,996  
FLETCHER YODER  
P.O. Box 692289  
Houston, TX 77269-2289  
(281) 970-4545